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State Supreme Court oversteps on mandating vaccine

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On Aug. 18, the Washington state Supreme Court issued an order mandating that all state court employees be vaccinated by Nov. 1 or lose their jobs. (Ellen M. Banner / The Seattle Times, File)

By [Dave Larson](#)

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Judges are supposed to stay above the fray on public policy debates because we may need to preside over legal disputes surrounding issues presented in the public sphere, and our public statements may create the appearance that we have prejudged the issues.

So, why am I stepping out on an important public policy issue? Because I have refused to impose an illegal vaccine mandate that I believe goes against my oath of office.

On Aug. 18, the state Supreme Court issued an [order](#) mandating that all state court employees be vaccinated by Nov. 1 or lose their jobs. Up until that time, I had to remain silent on Gov. Jay Inslee's vaccine mandate, but the state Supreme Court order purported to give local judges, including myself, the authority to mandate vaccines. I believed that I had a duty to step forward to plead with our leaders to follow the law. This is not about vaccines; it is about preserving our form of

government. Our entire system of government has been compromised by the failure to follow the basic rules of our governance.

The issue is not whether vaccinations can be legally required; the issue is whether the governor, the justices or others have the lawful authority to force public employees or anyone else to be vaccinated as a condition of employment.

I sent an email to the Supreme Court and all presiding judges urging reconsideration of the order. I laid out the reasons why the mandates were illegal. In essence, neither the governor nor the Supreme Court has the authority to pass vaccine mandates, only the Legislature has that power. Long-standing case law, existing state statutes and regulations regarding the control of contagious diseases, the constitution, and past practice support this notion.

In addition, when looking at long-standing state law on public health, the governor's emergency powers do not extend to health emergencies; he only serves in a support role and not in a command-and-control role. The Supreme Court obviously serves no statutory role in managing health emergencies except to follow and interpret laws and regulations in dispute. Only the Legislature created in Article 2 and the state Board of Health created in Article 20 of our state constitution can pass laws and regulations regarding contagious diseases. Other public officials do not create health laws and regulations, they simply follow them.

Therefore, there is no valid "authority of law" that currently allows public employers to override their employees' privacy rights guaranteed by Article I, Section 7, of our state constitution. This means that employees cannot be terminated for failing to perform an act that the employer has no legal authority to require. The governor's sole remedy is to call for a special session to request that the Legislature mandate vaccines. The proper role of the justices was to remain silent on the issue.

This is an existential issue for our democratic republic. It is time to draw a line in the sand and not permit this unconstitutional overreach to occur by demanding that the respective officials reconsider their respective mandates. If not, then the issue needs to be litigated.

The question is whether we want 147 elected representatives after open discussion and debate to create our legal obligations. Or, whether we want one person, or just a few people, after no discussion or debate to decide our legal obligations. It's easy to agree to allow one person to decide if you agree with the decision at hand, but what happens when you are on the receiving end of a decision that you would have opposed if given the chance.

As further evidence of the breakdown of our system, it will be an interesting ethical issue for the justices if they are asked to hear any challenge to the vaccine mandates. After all, they have already made the very public decision that they have the authority to create a vaccine mandate for their own staff. Our entire Supreme Court could arguably be disqualified from hearing this issue if it comes before them.

Otherwise, how can any party opposing vaccine mandates feel that they will have a fair hearing?

I don't question the desire of elected officials to do what they think is right regarding vaccinations, and I give them the benefit of the doubt that they fell into this trap unwittingly. However, they took the same oath that I did to support our state and federal constitutions, and they need to adhere to the rules regarding how we govern or the oath they took is meaningless.

It should never be considered a courageous act to disagree with our government, but the most troubling evidence of the breakdown of our system is that the fear of standing up has brought us to our knees.

Dave Larson is a Federal Way municipal court judge and has received awards for his role in promoting judicial independence and civics education.